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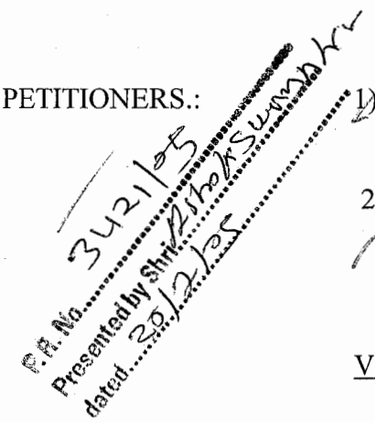
BEFORE, THE HIGH COURT OF JUDICATURE AT BILASPUR, (C.G.)

W.P.NO. 3325 / 05.



PETITIONERS.: 1). UNION OF INDIA, South East Central Rly. Through, The General Manager, S.E. C.Rly., BILASPUR.

2). The Sr. Divisional Personnel Officer , S.E.C. Rly. ,Bilaspur.(now, Raipur).

VERSUS

RESPONDENTS : Rahul Kumar Meshram S/O, Late Sunandan Meshram, Aged about 30 Years, R/O, Behind R.P.F. Office, Near Mal Godam, RAIPUR.

PETITION UNDER ART. 226/ 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF THE WRIT OF CERTIORARI AND/ OR ANY OTHER APPROPRIATE DIRECTION/ DIRECTIONS, ORDER/ ORDERS ETC.

HIGH COURT OF CHHATTISGARH : BILASPUR

Division Bench

Coram : **Hon'ble Shri H.L. Dattu, CJ &**
Hon'ble Shri V.K. Shrivastava, J

WRIT PETITION NO. 3325 OF 2005

PETITIONERS Union of India, South East Central Railway and another.

Versus

RESPONDENT Rahul Kumar Meshram

Present :

Shri Vinay Harit, Sr. Advocate with Shri Suryakant Mishra, counsel for the petitioner.

Shri H.B. Agrawal, Sr. Advocate with Shri J.K. Gupta, counsel for the respondent.

ORAL ORDER

(Passed on 23rd February, 2007)

The following oral order of the Court was passed by H.L. Dattu, C.J.

This is a case of a request and rejection for appointment on compassionate grounds. Respondent before us is the son of second wife of the deceased Late Sunandan Meshram, who was an employee in South East Central Railways, Bilaspur. He died in harness. The respondent made a claim before the petitioners for appointment on compassionate grounds. The said claim has been rejected by the petitioners. It is, therefore, he had approached the Central Administrative Tribunal, Jabalpur Bench, by filing an application O.A.No.526/2004. The Tribunal relying on the circular issued by the

Railway Board ("the Board" for short) had allowed the respondent's application and has issued certain directions to the petitioners. The order passed by the Tribunal is as under:

> "We have perused Annexure R/1 dated 20.1.92 in which it is mentioned that ".the appointments on compassionate grounds to the second widow and her children are not to be considered unless the administration has permitted the second marriage, in special circumstances, taking into account the personal law etc." According to aforesaid law the second wife may not be entitled for compassionate appointment but the applicant being son of the deceased Govt. servant is entitled. We have perused the impugned orders dated 2.8.95 and 9.1.2003. It is made clear that the second wife Smt. Malti Meshram is not entitled for compassionate appointment in favour of herself, but the present applicant is legally entitled to claim for compassionate appointment and his claim cannot be rejected merely on the ground that he is son of the second wife of the deceased Govt. servant. The respondents should have considered the facts and circumstances regarding the contentions of the applicant which they have not considered in passing the impugned orders. Hence, the impugned orders dated 2.8.95 and 9.1.2003 are quashed and set aside."

2) The petitioners being aggrieved by the aforesaid order passed by Central Administrative Tribunal, are before us in this writ petition.

3) Admitted facts are :

The respondent in this writ petition is the son of the second wife of the deceased Late Sunandan Meshram. He was an employee of South East Central Railway, Bilaspur. While in service, he expired. His claim for appointment on compassionate ground is rejected by the Railway authorities, keeping in view the circular/instructions issued by the Board dated 20/01/1992. The circular dated 20/01/1992 (Annexure P/4) reads as below:

"No.P/Comp/Poly/IV dated 20.1.92.

A copy of Railway Board's letter No.E.(NG)II/91/RC-1/136 dated 2.1.1992 (R.B.E.No.1 of 1992) is published for information and guidance.

Copy of Board's letter No.E(NG)11/91/RC-1/136 dated 2.1.1992 addressed to the General Managers (P), All Zonal Railways and others.

Appointment on compassionate grounds – cases of second wife and her wards.

It is clarified that in the case of railway employees dying in harness etc. leaving more than one widow along with Children born to the 2nd wife, while settlement dues may be shared by both the widows due to Court orders or otherwise on merits of each case, appointments on compassionate grounds to the second widow and her children are not to be considered unless the administration has permitted the second marriage, in special circumstances, taking into account the personal law etc.

2. The fact that the second marriage is not permissible is invariably clarified in the terms and conditions advised in the offer of initial appointment.

3. This may be kept in view and the cases for compassionate appointment to the second widow or her wards need not be forwarded to Railway Board."

4) In fact, relying on the aforesaid circular, a direction is issued by the Board. Therefore, the circular requires to be re-read by us. The purport of the circular in our view is, a railway employee dying in harness leaving more than one widow along with children born to the second wife, while settlement of dues requires to be shared by both the widows either due to the Court orders or otherwise on merits of each case. Insofar as the appointments on compassionate ground to the second widow and her children is not to be considered unless the administration has permitted the second marriage.

5) The circular issued by the Board is binding on the authorities. In the instant case, it is not the case of the respondent that the railway authorities had permitted the second marriage of late Sunandan

Meshram. It is only when the second marriage is permitted, then only the second widow and her children are entitled to claim appointment on compassionate grounds.

6) Learned counsel appearing for the petitioners would submit that the Tribunal has misunderstood and misinterpreted the circular issued by the Board and, therefore, the impugned order requires to be interfered with.

7) Per contra, learned counsel appearing for the respondent would submit that the Tribunal is justified in issuing direction to the Railway Authorities to consider the case of the respondent, who is son of the second wife of the deceased employee. In aid of his submission, the learned counsel relies upon the observations made by the Apex Court in the cases of **Smt. Parayankandiyal Eravath Kanapravan Kalliani Amma and others vs. K. Devi and others** reported in **AIR 1996 SC 1963)** and **Rameshwari Devi vs. State of Bihar and others** reported in **AIR 2000 SC 735.**

8) At the outset, none of the case laws on which reliance is placed by the respondent would assist him in the present case. In fact, the facts and circumstances of those cases are nowhere nearer to or identical to the facts and circumstances of the present case.

9) The Tribunal after going through the circular passed by the Board dated 20-1-1992, in our view, could not have directed the Railway Authorities to consider the case of the respondent herein for appointment on compassionate ground, since the deceased employee had not taken prior permission of the Railway authorities to contract the second marriage.

10) In that view of the matter, the conclusion reached by the Tribunal is contrary to the purport and object of the circular/instructions issued by the Board dated 20-1-1992. Therefore, we cannot sustain the order passed by the Tribunal. Accordingly, it requires to be set aside by us. In the result, the following :

Order

1. The petition is allowed.
2. The order passed by the Tribunal dated 5-4-2005 in O.A.No.526/2004 is set aside.
3. Ordered accordingly.

Sd/-
V.K.Shrivastava
Judge

Sd/-
Chief Justice